powers of nature. The modern tendency is to lean in favor of control where possible, and these "minerals *feræ naturæ*," as the Pennsylvania courts have called natural gas and petroleum, are well worth controlling. On the other hand, it is a difficult matter to say what use of percolating water, oil, or natural gas is and what not injurious to the rights of others; and the courts may well hold, as the Pennsylvania court has done, that they will not run the risk of too much control for the sake of a doubtful benefit.

JUDICIAL NOTICE — WAIVER OF SOVEREIGNTY. — In *Mighell* v. *The Sultan of Johore*, a very recent English breach of promise case, the defendant has procured the judgment of the Court of Appeal confirming the dismissal of the action. Mr. Justice Wright, before whom the case originally came in chambers, inquired of the Marquis of Ripon, Secretary of State for the Colonies, concerning the defendant's status, and received the answer that Johore was an independent State, and the defendant (Mr. Albert Baker) its reigning sovereign. So far the case follows *Taylor* v. *Barclay*, 2 Sim. 213. The next step is interesting. The plaintiff endeavored to go into the evidence upon the subject, and cited a case in which the courts of Malacca had held that the defendant's predecessor was liable to be sued. In *The Charkieh*, L. R. 4 Ad. & Eccl. 59, Sir Robert Phillimore had based his decision, that the Khedive of Egypt was not a sovereign, upon general history, firmans, treaties, and an answer of the Foreign Office, devoting the larger part of his judgment to the first three grounds, but fortunately reaching the same conclusion as the Foreign Office. Hence, the plaintiff's counsel argued, the court ought to investigate the question, and decide the status of Johore for themselves. But Lord Esher, M. R., delivering the unanimous judgment of the Court of Appeal, disposes of this first point. The declaration of the Queen's Secretary of State is final; behind it the Queen's judges do not go.

The case furnishes a good illustration of the nature of judicial notice. The judge does not decide upon what he believes to be the fact, or upon what he knew about at the hearing, but a fact which from its nature can be ascertained without the assistance of counsel or pleadings is finally decided by another branch of the government, in whom by recognized principles of public law the decision of that question rests. The precise point to be decided is not the fact of sovereignty, but the relation of comity, which, independent of any facts, creates the exemption of the person recognized as a friendly sovereign. And the decision of that question by (in this case) the Colonial Office is final.

The plaintiff's second point is a weak but suggestive one. The argument was that the Sultan, by residing in England *incognito*, and there winning the plaintiff's affections, had waived his sovereignty and submitted to the jurisdiction of the courts; that he could not, in the language of Sir Robert Phillimore in *The Charkieh*, "assume the character of a trader, . . . and when he had incurred an obligation to a private subject, . . . throw off his disguise, and claim for the first time all the attributes of his character." It may well be doubted whether the alliance of a sovereign is not an act of State over which the courts should not take jurisdiction even when the defendant waives his right. But even if it be a private act, there is no force in any estoppel or waiver which can make a sovereign not a sovereign, or bar him from insisting upon his rights at all

times. The assumption of a right to estop is as great a step as any. Once take the jurisdiction to do that, and there is no ground for refusing to go on. On the strict principle of international law it would seem that in an action *in personam* by or against a foreign sovereign, a court act as arbitrators, without power to enforce his obedience; for even after judgment his extra-territoriality should not be violated by a friendly State. In an action *in rem*, on the other hand, jurisdiction, once obtained over the *rem*, might well subsist. See *The Charkieh* (cited *supra*); *United States* v. *Wilder*, 3 Sumner, 308.

BREACH OF PROMISE. — Such cases as *Mighell* v. *The Sultan of Johore*, *Van Houten* v. *Morse* (Mass. S. J. C. 1893), *Delia Keegan* v. *Russell Sage*, and *Zella Nicolaus* v. *George Gould* (N. Y.), and the evidence which they furnish of many other such cases settled out of court, do not show much justification for the action for breach of promise. Anomalous, practically an action of tort with heavy punitive damages claimed and often given, and used sometimes as a method of blackmail, sometimes as a means of expressing the indignation of all good jurymen against faithless swains, it forces the courts into a commercial view of what cannot properly be regarded as a matter of trade or dicker. It brings feelings not properly the subject of judicial investigation into undue publicity, and serves seldom as a real remedy for breach of legal obligation. Some years ago Lord (then Sir Farrer) Herschell proposed in the House of Commons, and Sir Henry James seconded, a resolution that "The action for breach of promise of marriage ought to be abolished, except in cases where actual pecuniary loss has been incurred by reason of the promise, the damages being limited to such loss." Here, in the United States, where a remedy and a punishment for seduction are generally provided, it would be interesting to have some one State at least adopt the spirit of this resolution. The similarity to other mutual agreements originally led the courts into allowing the action. As a fresh matter to-day it might well be doubted whether the commercial spirit is sufficiently apparent in the exchange of promises to show an intention of creating a contract in the sense in which contracts are enforced by the courts. The action seems peculiar to the common law.

If it is not to be abolished, at least the proof of the promise should be regulated. There is a serious lack of consistency in requiring written proof of a contract of sale of goods worth fifty dollars or so, and allowing a woman to recover forty thousand dollars or more on her own parol testimony, strenuously denied by the man. Yet such is the law.

MEANING OF "HIGH SEAS." — The Supreme Court, in *United States* v. *Rodgers*, has recently decided that the description, "high seas," in section 5346 of the Revised Statutes, gives jurisdiction to the Federal courts over the Great Lakes. The decision is based on the general use of the term in international law, and so has a wider interest than a mere interpretation of a statute. Justices Brown and Gray dissented, taking the position that "high seas" means only such waters as are open as of right to the commerce of the world.

In England the phrase "high seas" was used as practically co-extensive with the admiralty jurisdiction. But the fact that the Great Lakes are within the admiralty jurisdiction of the United States is not vital in